

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

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ALAN STUBBS

)

FOIA Control No. 2009-532

On Request for Inspection of Records

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**MEMORANDUM OPINION AND ORDER**

**Adopted: July 28, 2010****Released: August 3, 2010**

By the Commission:

**I. INTRODUCTION**

1. By this memorandum opinion and order we deny an application for review<sup>1</sup> by Alan Stubbs (Stubbs), which seeks review of a ruling<sup>2</sup> by the Office of General Counsel (OGC) denying Stubbs' request for a waiver of fees for processing his Freedom of Information Act (FOIA) request.<sup>3</sup> We find that OGC correctly determined that Stubbs is not entitled to a fee waiver. Accordingly, we deny his application for review.

**II. BACKGROUND**

2. Stubbs' FOIA request indicates that he complained to the Commission that he had been overcharged by Verizon for his FIOS service and that he was not satisfied with the Commission's response to the complaint.<sup>4</sup> Stubbs claimed that he was being mistreated by Verizon and that the Attorney General of New Jersey had filed suit against Verizon for billing for more than the quoted price, for inconsistent billing, for failure to provide promotional gifts, and for failure to honor requests to cancel the service.<sup>5</sup> He further stated:

Since I am unsure what corrective action if any your Agency can or will take in this matter I am contemplating litigation. To that end I request that this letter serve as a Freedom of Information [Act] (FOIA) request for all information in your possession and that of your Agency relating to Verizon's deceptive practices as outlined above. Documentation should include but is not limited to complaints received, action taken in response to complaints, and any and all

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<sup>1</sup> See Letter from Alan Stubbs to Mr. Joel Kaufman, Associate General Counsel (Nov. 12, 2009) (AFR).

<sup>2</sup> See Letter from Joel Kaufman to Alan Stubbs (Oct. 16, 2009) (Decision).

<sup>3</sup> See E-mail from Alan Stubbs to FOIA@fcc.gov (Jul. 17, 2009) (Request).

<sup>4</sup> See Request at 1-2.

<sup>5</sup> See *id.* at 2.

communications (including emails) between your Agency and Verizon as well as all internal memorandums.<sup>6</sup>

3. In response to agency's standard question of the maximum search fee he would be willing to pay,<sup>7</sup> Stubbs specified merely "waive." He also asserted that he was entitled to a reduced fee and gave as his reason "Shed light on government operations and reveal criminal [activity] on the part of government [employees]."<sup>8</sup>

4. OGC found that Stubbs had not met the relevant statutory standard for obtaining a fee waiver, which will be granted only "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."<sup>9</sup> Thus, to qualify for a fee waiver, the requester must demonstrate specifically how disclosure of the materials sought will contribute to the public's understanding of the operations or activities of the government.<sup>10</sup> OGC found that Stubbs had not demonstrated how release of the records sought would contribute to the public understanding of the operations or activities of the government.<sup>11</sup> According to OGC, Stubbs' interest in pursuing litigation against Verizon related to his personal interests and it was not apparent how documents relating to Verizon's conduct would contribute to public understanding of the operations or activities of government.<sup>12</sup> Finally, OGC found that Stubbs had not shown that he intended to disseminate the requested records to the public or how he would do so.<sup>13</sup>

### III. APPLICATION FOR REVIEW

5. In his AFR, Stubbs states:

I am in receipt of the [Decision]. During the six months that my [FOIA] request has been pending with the FCC I believed that I was in good faith negotiations with Mr. Arthur Scrutchins [an official of Complaints and Inquiries Division of the Consumer and Governmental Affairs Bureau (CGB)]. However [the Decision] appears to have failed to consider any of the information exchanged

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<sup>6</sup> See *id.*

<sup>7</sup> See <http://www.fcc.gov/foia/#reqform>, Item 9 ("Enter the maximum search fee the person making this request is prepared to pay.").

<sup>8</sup> See Request at 3.

<sup>9</sup> See Decision at 1; 5 U.S.C. § 552(a)(4)(A)(iii); 47 C.F.R. § 0.470(e) (criteria for granting a fee waiver).

<sup>10</sup> See *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987) (*MESS*) (requiring an explanation with "reasonable specificity how disclosure will contribute to public understanding"), citing *National Treasury Employees Union v. Griffin*, 811 F.2d 644, 647 (D.C. Cir. 1987) (burden is on the requester to identify and demonstrate with "reasonable specificity" the public interest to be served).

<sup>11</sup> See Decision at 1.

<sup>12</sup> See *id.* at 2.

<sup>13</sup> See *id.*

between myself and Mr. Scrutchins which leads me to believe that this was merely a delaying tactic on the part of the FCC to avoid action on my request.

My request is meant to shed light on the operation of the FCC and the inappropriate relationship with the carriers it should be regulating. . . .

. . . .

According to Mr. Scrutchins the FCC received over 9000 complaints regarding Verizon during the most recent 18 month period. However if I want to know what these complaints entailed or what if anything the FCC did in response it will cost me \$50,000. This is a very high price for an individual citizen to pay to demonstrate the incompetence of [CGB].

. . . .

I remain concerned that the relationship between the FCC and the carriers appears to be heavily in favor of the carriers to the detriment of consumers. In particular the manner in which [CGB] operates appears to be nothing more than a rubber stamp for Verizon and others to defraud consumers . . . .

. . . .

This information will be used to provide insight to the Commission as it undertakes its "Truth in Billing" initiative and to the Congress on the potential failure of the FCC in responding to consumers. As such I request that the charges for this request be waived.<sup>14</sup>

#### IV. DISCUSSION

6. The additional explanatory material in the AFR does not provide any basis to overturn OGC's finding that Stubbs is not entitled to a fee waiver. As to Stubbs' contention that OGC failed to consider the information Stubbs exchanged with Scrutchins, we find that Stubbs has not explained how any information allegedly exchanged is relevant to the likelihood that Stubbs' request will contribute to the public's understanding of the operations or activities of the government.

7. As OGC explained, under the FOIA, a fee waiver will be granted under this provision only "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."<sup>15</sup> We agree with OGC that Stubbs' primary reason for filing his FOIA request appears to have been to assist in prosecuting his own complaint against Verizon and not in contributing to the public's insight into the operations or

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<sup>14</sup> See AFR at 1-2.

<sup>15</sup> See Decision at 1.

activities of the government.<sup>16</sup> Stubbs' FOIA request plainly states: "Since I am unsure what corrective action if any your Agency can or will take in this matter I am contemplating litigation. *To that end I request that this letter serve as a Freedom of Information [Act] (FOIA) request. . . .*"<sup>17</sup> Further, while Stubbs states in his AFR that "[t]his information will be used to provide insight to the Commission as it undertakes its 'Truth in Billing' initiative and to the Congress on the potential failure of the FCC in responding to consumers,"<sup>18</sup> he makes no mention of any plans or ability to disseminate the information to the public at large.<sup>19</sup>

8. We also see no basis to find that the information requested, if disclosed, will likely contribute to public understanding of the operations or activities of the government. Raw information about the filing of complaints against Verizon simply shows that the FCC receives such complaints. Stubbs has not established any likelihood that any of the information requested will, for example, "reveal criminal [activity] on the part of government [employees]"<sup>20</sup> or show that the "manner in which [CGB] operates [is] nothing more than a rubber stamp for Verizon and others to defraud consumers."<sup>21</sup> For these reasons, Stubbs has not met the statutory standard for obtaining a fee waiver.

## V. ORDERING CLAUSE

9. ACCORDINGLY, IT IS ORDERED that the application for review filed by Alan Stubbs IS DENIED. Stubbs may seek judicial review of this action, pursuant to 5 U.S.C. § 552(a)(4)(B).

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<sup>16</sup> See *McClain v. U.S. Dep't of Justice*, 13 F.3d 220, 221 (7th Cir. 1993) (former inmate's request for information concerning federal investigation and prosecution of him served to facilitate a challenge to his conviction and therefore did not qualify as contributing significantly to the public understanding of government operations).

<sup>17</sup> See Request at 2 [emphasis added].

<sup>18</sup> See AFR at 2.

<sup>19</sup> See *MESS*, 835 F.2d at 1287 (requester who failed to give details about intention to convey information to the public is not eligible for a fee waiver); *Larson v. CIA*, 843 F.2d 1481, 1483 (D.C. Cir. 1988) (absence of specific information regarding ability to disseminate requested information is grounds for denying a fee waiver).

<sup>20</sup> See Request at 3.

<sup>21</sup> See AFR at 2; see also *VoteHemp, Inc. v. Drug Enforcement Admin.*, 237 F. Supp.2d 55, 61 (D.D.C. 2002) (requester's allegations that DEA had ulterior motive for issuing interpretive rule and that public should be made aware of it was "nothing more than rank speculation").

10. The officials responsible for this action are the following: Chairman Genachowski and Commissioners Copps, McDowell, Clyburn, and Baker.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary